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In The
Supreme Court of the United States
October Term, 1987

MARCO SAMAYOA, et al.,

Petitioners,

vs.

CHICAGO BOARD OF EDUCATION, et al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

RESPONDENTS' MEMORANDUM ON MOOTNESS

ROBERT C. HOWARD
122 South Michigan Avenue
Suite 1850
Chicago, IL 60603
(312) 427-3600
Counsel for Respondents

Of Counsel:

HUGH R. MCCOMBS, JR.
MAYER, BROWN & PLATT
190 So. LaSalle St.
Suite 3900
Chicago, IL 60603

ROBERT M. WEISSBOURD
CLAIRE T. HARTFIELD
HARTUNIAN, FUTTERMAN &
HOWARD, CHTD.
122 So. Michigan Ave.
Suite 1850
Chicago, IL 60603

Pandick Technologies, Inc., Chicago • (312) 236-0200

22 pp

TABLE OF CONTENTS

	PAGE
TABLE OF AUTHORITIES	ii
STATEMENT OF THE CASE RELATING TO MOOTNESS	1
A. Facts Concerning Whether The Issues Presented Remain Live	3
B. Facts Concerning Whether Plaintiffs Have A Legally Cognizable Interest	8
REASONS WHY PLAINTIFFS' CLAIM IS MOOT	9
I. The Issues Presented In The Fourth Amended Complaint Are No Longer Live	10
II. The Parties No Longer Have A Legally Cognizable Interest In The Outcome	15
CONCLUSION	18

TABLE OF AUTHORITIES

PAGE

Board of School Commissioners of the City of Indianapolis v. Jacobs, 420 U.S. 128 (1975) 16

DeFunis v. Odegaard, 416 U.S. 312 (1974) 16

Iron Arrow Honor Society v. Heckler, 464 U.S. 67 (1983) 12

Pasadena City Board of Education v. Spangler, 427 U.S. 424 (1976) . 15

Princeton University v. Schmid, 455 U.S. 100 (1982) 11

United States v. Munsingwear, Inc., 340 U.S. 36 (1950) 19

United States Department of Treasury v. Galiato, ___ U.S. ___, 106 S.Ct. 2683 (1986) 11

United States Parole Commission v. Geraghty, 445 U.S. 388 (1980) . 10

Weinstein v. Bradford, 423 U.S. 147 (1975) 12

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RESPONDENTS' MEMORANDUM ON MOOTNESS

Respondents, the Board of Education of the City of Chicago, et. al (the "Board"), at the request of the Court, submit this supplemental memorandum on the issue of mootness.

STATEMENT OF THE CASE RELATING TO MOOTNESS

This case is before the Court on plaintiffs' appeal of the dismissal of Count I of the Fourth Amended Complaint ("Complaint"), the only Count which has

not previously been finally disposed. Count I alleges claims based on constitutional and statutory rights of freedom of association, due process and equal protection.

The Board has previously addressed the mootness of these claims as part of its Brief in Opposition to the Petition for a Writ of Certiorari. This Memorandum provides limited further discussion of the two principal circumstances which make this claim moot: (1) the Complaint concerns a one-time aberration which cannot be repeated, and (2) plaintiffs are no longer eligible for the program to which they seek admission because they are now older than pre-kindergarten age.

A. Facts Concerning Whether The Issues Presented Remain Live

The factual allegations of the Complaint (accepted as true for these purposes) relate solely to the disposition of plaintiffs' applications for admission to Disney School under the system in effect in 1981. (R.App. 374a).[1] That admissions process ended when, in 1982, a new systemwide enrollment plan was developed as part of the Board's Desegregation Plan. (R.App. 526a).

Student selection at Disney for school year 1981-82 was conducted

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[1]The following abbreviations for citations are used in this brief: "R.App." refers to Respondents' Appendix; "Pet.App." refers to Petitioners' Appendix; "Petition" refers to the plaintiffs' Petition for a Writ of Certiorari.

pursuant to a 1973 Board Report. (R.App. 507a). That report set a racial/ethnic enrollment composition for the year 1973, based on the racial, ethnic and socio-economic composition of the limited Disney attendance area on the north side of Chicago. The 1973 report called for annual revisions for future classes to reflect changes over time in the area's racial/ethnic composition. (R.App. 507a).

Under this admissions system, plaintiffs applied for admission to the pre-kindergarten program at Disney for school year 1981-82. (R.App. 377a). For reasons not of record, the enrollment composition set in 1973 had not been annually revised and was still in effect in 1981. (R.App. 519a). Plaintiffs

received letters of acceptance based on the 1973 enrollment proportions.

However, in June 1981, the Board reviewed the 1973 enrollment proportions and revised them to conform with the 1981 racial/ethnic composition of the Disney attendance area. (R.App. 520a-521a). Plaintiffs were notified of the 1981 revisions, the reasons for them, and that as a result of the revisions they would not, in fact, be admitted. (R.App. 422a).

Plaintiffs were also informed that they might be eligible for admission to Disney in following years. (R.App. 422a). However, the record contains no evidence, and the Complaint does not allege, that plaintiffs made any further

attempts to apply for admission to Disney.

The only subject of the Complaint is this 1981 admissions system. (R.App. 374a). Plaintiffs complain about the determination of enrollment composition based on local demographics, the revision, and the procedures which resulted in acceptance letters but not admission. (R.App. 374a).

In 1982, after these events which are the subject of the Complaint had occurred, the 1981 admissions system was replaced. (R.App. 526a). The Board developed and began implementing a systemwide Desegregation Plan which included designation and operation of magnet schools, including Disney. (R.App. 487a, 500a, 526a). In compliance

with the Desegregation Plan, the Board replaced the 1981 admissions system particular to Disney with the systemwide enrollment guidelines applicable to all magnet schools. (R.App. 526a). Under the Desegregation Plan, the enrollment guidelines establish a range (rather than a fixed percentage), are not subject to annual revision, and are not directly tied to the racial/ethnic composition of any local attendance area, the school system, or any other population (instead reflecting several Desegregation Plan considerations). (R.App. 506a). Of course the implementation procedures are different, and have not repeated the acceptance but non-admission phenomenon.[2]

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[2]Even under the 1981 system, the events complained of were a one-time aberration. The post-acceptance, pre-

The magnet school enrollment system has not been changed in the six years since 1982 and will continue unchanged as part of the Desegregation Plan. (R.App. 528a-543a).

B. Facts Concerning Whether Plaintiffs Have A Legally Cognizable Interest

The allegations of the Complaint relate solely to plaintiffs' exclusion in 1981 from Disney's pre-kindergarten program. At that time, plaintiffs were all allegedly 3 and 4

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admission change in Disney's racial/ethnic proportions was a unique occurrence. It did not happen in any other year, even under the 1981 system, and it cannot happen under the Desegregation Plan presently in effect. (R.App. 519a).

years old.[3] (R.App. 376a). Thus, they are now 10 and 11 years old, not eligible for pre-kindergarten. Further, there is no allegation that they would still be attending Disney now if they had been admitted to the pre-kindergarten program.

REASONS WHY PLAINTIFFS' CLAIM IS MOOT

Mootness occurs under either of two circumstances: (1) the issues presented are no longer "live"; or (2) the parties lack a legally cognizable interest in the outcome. United States Parole Commission v. Geraghty, 445 U.S.

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[3]Although the Fourth Amended Complaint alleges that the action is being brought on behalf of a class, there never have been any proceedings to have a class certified. In fact, plaintiffs' counsel has conceded that this case is not a class action and that he represents plaintiffs only in their individual capacities. (Pet. App. 40)

388, 396 (1980). Both these circumstances are present here.

I.

The Issues Presented In The Fourth Amended Complaint Are No Longer Live

Plaintiffs' exclusion from Disney's pre-kindergarten program in 1981 was an aberration due to a one-time, post-acceptance, pre-enrollment revision of the school's racial/ethnic proportions. That one-time change took place under an admissions system which was wholly superceded in 1982 by the Desegregation Plan. Thus, the alleged offending 1981 Board conduct permanently ceased long ago: plaintiffs' claim is no longer live.

A case becomes moot where the allegedly illegal action ceases, includ-

ing particularly where the guidelines under which the illegal action is authorized have been repealed or modified so that the offending provisions are no longer effective. United States Department of Treasury v. Galiato, ___ U.S. ___, 106 S.Ct. 2683, 2686 (1986) (case moot where statute amended to eradicate offending provision); Princeton University v. Schmid, 455 U.S. 100, 103 (1982) (case moot where university regulation amended to eliminate the provision upon which the claim was based).[4] This is true even where

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[4]There is a limited exception to this rule where the action is "capable of repetition, yet evading review." However, to come within this exception (1) the challenged action must have been too short in duration to be fully litigated prior to cessation and (2) there must be some reasonable expectation that the same complaining party will be

cessation is voluntary, if there is no reasonable expectation that the alleged wrong will be repeated. Iron Arrow Honor Society v. Heckler, 464 U.S. 67, 72 (1983).

Here, plaintiffs complain about the details of implementation of a 1981 admissions system which was replaced in 1982. The new enrollment plan, as part of the Desegregation Plan, entirely differs in its development and justification, in its requirements, and, consequently, in its implementation. It does not have the implementation details present in the 1981 admissions process

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subjected to the same action again. Weinstein v. Bradford, 423 U.S. 147, 149 (1975). As is clear from the discussion herein, plaintiffs' claim does not satisfy these criteria.

about which plaintiffs complain.[5] For example, the new plan includes enrollment ranges applicable uniformly to all magnet schools, which are not directly tied to racial/ethnic composition of population and are not subject to change from year to year.

This Desegregation Plan was developed in response to extensive findings by the United States (R.App. 26a, 43a) which culminated in the filing of its complaint against the Board alleging systemwide segregation. (R.App. 136a). The required enrollment plan which superceded the 1981 system at Disney has been in effect without change for six years, implemented throughout the

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[5]Plaintiffs did not later apply, and so were not subjected to, the new enrollment plan.

system, pursuant to a binding Consent Decree (R.App. 150a), under court supervision.

Plaintiffs complain about the peculiar details of a one-time adjustment to the admissions system at Disney in 1981 that occurred after acceptance but before admission, that affected only a few students during a single year, and that has not and cannot recur. Plaintiffs have admitted that had they not been accepted they would have no claim. (Petition 24) Since the admission process about which plaintiffs complain has been permanently replaced by an entirely different system under which post-acceptance, pre-admission changes cannot occur (and to which plaintiffs have not subjected themselves), the

allegedly offensive conduct has ceased, and plaintiffs' claim is moot.

II.

The Parties No Longer Have A Legally Cognizable Interest In The Outcome

Plaintiffs, who were 3 and 4 years old in 1981, are now ages 10 and 11. They obviously no longer wish to attend the pre-school programs. Thus, since they are no longer eligible for admission to Disney's pre-kindergarten program, they lack a legally cognizable interest in the outcome of their claims.

A claim is moot where plaintiffs can no longer be affected by the actions complained of, Pasadena City Board of Education v. Spangler, 427 U.S. 424 (1976) (appeal in school desegregation case moot as to the students who had

graduated from the school system and their parents); Board of School Commissioners of the City of Indianapolis v. Jacobs, 420 U.S. 128 (1975) (suit challenging school board regulations moot as to students who had graduated from the school system); DeFunis v. Odegaard, 416 U.S. 312 (1974) (case moot as to student who was in his last semester of law school and would never again go through the law school admissions process). With regard to suits brought as class actions, if the named plaintiffs can no longer be affected, a claim is moot unless the class has been certified. Jacobs, 420 U.S. at 129.

In this case, plaintiffs' Complaint only raises issues about the 1981 admissions process for pre-

kindergarten classes at Disney, and plaintiffs can no longer be affected by that process. The factual allegations do not address the effect of the new enrollment plan on current applicants to pre-kindergarten or the effect of the 1981 program on applicants to any grade above pre-kindergarten. The Complaint is void of any attempt to represent these concerns.

Finally, the Complaint's class allegations do not save this case from mootness. The original Complaint in this case was filed in 1980, reaching its final form as the Fourth Amended Complaint in 1982. Never in the past seven years have plaintiffs even attempted to have a class certified. Thus, under Jacobs, since the individual

plaintiffs no longer have an interest, the claim is moot. Further, plaintiffs' counsel has affirmatively stated that this action is being brought only on behalf of the plaintiffs in their individual capacities. (Pet.App. at 40).

Since these individuals no longer have a legally cognizable interest in, and can no longer be affected by, the outcome of this litigation, their claim is moot.

CONCLUSION

For the foregoing reasons, plaintiffs' claim is moot. In keeping with the established practice of this Court in disposing of civil cases which have become moot, the opinion of the Court of Appeals for the Seventh Circuit should be vacated and this case should be

remanded to the District Court with a direction to dismiss. See United States v. Munsingwear, Inc., 340 U.S. 36, 39 (1950).

Respectfully submitted,

HUGH R. McCOMBS, JR.
190 So. LaSalle St.
Suite 3900
Chicago, IL 60603
(312) 782-0600

ROBERT C. HOWARD
122 So. Michigan
Suite 1850
Chicago, IL 60603
(312) 427-3600

Counsel for Respondents

Of Counsel:

MAYER, BROWN & PLATT
190 So. LaSalle St.
Suite 3900
Chicago, IL 60603
(312) 782-0600

ROBERT M. WEISSBOURD
CLAIRE T. HARTFIELD
HARTUNIAN, FUTTERMAN
& HOWARD, CHTD.
122 So. Michigan Ave.
Suite 1850
Chicago, IL 60603
(312) 427-3600